

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THE PHOENIX INSURANCE  
COMPANY, a foreign insurance company,

Plaintiff,

v.

OTAK, INC. an Oregon Corporation, THE  
CITY OF RIDGEFIELD, a municipality  
and ROGER SINCLAIR, an individual.

Defendants.

No. 3:23-CV-5125-JHC

**MOTION TO DISMISS ROGER  
SINCLAIR WITHOUT PREJUDICE**

**NOTE ON MOTION CALENDAR:  
JULY 14, 2023**

Plaintiff The Phoenix Insurance Company submits the following Motion to Dismiss  
Defendant Roger Sinclair without prejudice.

**MOTION TO DISMISS**

This is a Declaratory Judgment action filed by The Phoenix Insurance Company,  
(Phoenix), against Otak, Inc., (Otak), The City of Ridgefield, (Ridgefield), and Roger Sinclair,  
(Sinclair). In this Action, Phoenix was seeking a judicial determination that it no longer owes Otak  
a duty to defend or indemnify Otak in the underlying lawsuit entitled *Roger Sinclair v. the City of  
Ridgefield et al.*, Clark County Superior Court Cause No. 22-2-00360-06 (hereinafter the  
“Underlying Lawsuit”). Since the filing of this action, Phoenix and Otak have reached a settlement  
agreement. Accordingly, Phoenix and Otak have filed a stipulated dismissal of Otak without

1 prejudice. Dkt. 20. Phoenix has also voluntarily dismissed the City of Ridgefield. *Id.* These  
2 dismissals have been granted by the Court. Dkt. 21.

3 Accordingly, the only party remaining as a defendant in this action is Roger Sinclair. Mr.  
4 Sinclair is the claimant in the underlying lawsuit. Phoenix attempted to include Mr. Sinclair in the  
5 stipulated dismissal, but Mr. Sinclair would not sign the stipulation unless he was dismissed with  
6 prejudice. Ex. 1 to Declaration of N. Chance Laboda. It is Phoenix's position that Mr. Sinclair  
7 should be dismissed without prejudice as the underlying lawsuit is still ongoing. Accordingly, the  
8 claims asserted in the underlying could still change, which in turn may necessitate the re-filing of  
9 this action. Otak and Phoenix have protected their rights by entering a dismissal without prejudice.  
10 Dkt. 20, Dkt. 21. Because Sinclair is the claimant in the underlying lawsuit, Sinclair is a necessary  
11 party to this action and should be dismissed without prejudice.

12 Fed. R. Civ. P. 41(a)(2) states:

13 2) *By Court Order*; Effect. Except as provided in Rule 41(a)(1), an  
14 action may be dismissed at the plaintiff's request only by court order,  
15 on terms that the court considers proper. If a defendant has pleaded  
16 a counterclaim before being served with the plaintiff's motion to  
17 dismiss, the action may be dismissed over the defendant's objection  
only if the counterclaim can remain pending for independent  
adjudication. Unless the order states otherwise, a dismissal under  
this paragraph (2) is without prejudice.

18 In this case, Sinclair has not asserted any counterclaims against Phoenix. Further, Sinclair  
19 cannot advance any argument for why he should be dismissed without prejudice. Accordingly,  
20 and pursuant to Fed. R. Civ. P. 41(a)(2), Phoenix requests that Sinclair be dismissed without  
21 prejudice and without further recovery of any party.

22 DATED this 22nd day of June, 2023.  
23  
24

1 *I certify that this memorandum contains 410 words,*  
2 *in compliance with the Local Civil Rules.*

3 LETHER LAW GROUP

4 /s/ Thomas Lether

Thomas Lether, WSBA #18089

5 /s/ N. Chance Laboda

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8 *Attorneys for Plaintiff The Phoenix Insurance*  
9 *Company.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the party mentioned below as indicated:

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**By:**    ☐ First Class Mail                      ☒ E-Service/Email                      ☐ Legal Messenger

DATED this 22nd day of June 2023, at Seattle, Washington.

/s/ Devon Sheehan  
Devon Sheehan | Paralegal